SUMMARY of COOPERATIVE CASES

Prepared by

RAYMOND J. MISCHLER, *Attorney*
OFFICE OF THE GENERAL COUNSEL, U.S.D.A.

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The comments on cases reviewed herein represent the personal opinion of the author and not necessarily the official views of the Department of Agriculture.

ANTITRUST LAW - AGRICULTURAL COOPERATIVE

NOT EXEMPT FROM SECTIONS 2 and 3 OF SHERMAN ACT

OR SECTION 7 of CLAYTON ACT.

(United States v. Maryland & Virginia Milk Producers Association, Inc., 80 S. Ct. 847, (May 2, 1960))

Section 6 of the Clayton Act and the Capper-Volstead Act "make it possible for farmer-producers to organize together, set association policy, fix prices at which their cooperative will sell their produce, and otherwise carry on like a business corporation without thereby violating the antitrust laws." These Acts do not, however, vest cooperatives with "unrestricted power to restrain trade or to achieve a monopoly" by predatory practices. So ruled the United States Supreme Court, on May 2, 1960, in the cited case.

With respect to the acquirement of processing facilities, the Court points out that "their purchase simply for business use, . . . often would be permitted and would be lawful under Capper-Volstead," unless such a lawful contract, viewed in the context of all the evidence and findings, helps to make up a pattern of unlawful conduct.

It will be recalled, from past reports on this case (Summaries No. 7 and 8) that the United States in 1956 brought civil antitrust action against Maryland & Virginia Milk Producers Association, Inc. The Association supplies about 86% of the milk purchased by all milk dealers in the Washington, D.C. metropolitan area, and has as members about 2,000 Maryland and Virginia dairy farmers. The complaint charged that the Association had:

(1) attempted to monopolize and had monopolized interstate trade and commerce in fluid milk in Maryland, Virginia, and the District of Columbia, in violation of § 2 of the Sherman Act;

(2) through contracts and agreements combined and conspired with Embassy Dairy and others to eliminate and foreclose competition in the same milk market area in violation of § 3 of that Act; and

(3) bought all the assets of Embassy Dairy, the largest milk dealer in the area which competed with the Association's dealers, the effect of which acquisition might be substantially to lessen competition or to tend to create a monopoly in violation of § 7 of the Clayton Act. The chief defense set up by the Association was that, because of its being a cooperative composed exclusively of dairy farmers, § 6 of the Clayton Act and §§ 1 and 2 of the Capper-Volstead Act completely exempted and immunized it from the antitrust laws with respect to the charges made in the Government's complaint.

The District Court concluded after arguments that

> "an agricultural cooperative is entirely exempt from the provisions of the antitrust laws, both as to its very existence as well as to all of its activities, provided it does not enter into conspiracies or combinations with persons who are not producers of agricultural commodities." 167 F. Supp. 45, 52.

Accordingly, the court dismissed the Sherman Act § 2 monopolization charge, where the Association was not alleged to have acted in combination with others, but upheld the right of the Government to go to trial on the Sherman Act § 3 and Clayton Act § 7 charges because they involved alleged activities with the owners of Embassy and other persons who were not agricultural producers. After trial the court found for the United States on the latter two charges and entered a decree ordering the Association to divest itself within a reasonable time of all assets acquired from Embassy and to cancel all contracts ancillary to the acquisition. (167 F.Supp. 799, 168 F Supp.880)

The court refused to grant additional relief for which the United States asked. It is from this refusal and the dismissal of its Sherman Act § 2 monopolization charge that the Government appealed directly to the U. S. Supreme Court. The Association similarly appealed to review the judgments against it on the Sherman Act § 3 charge and the Clayton Act § 7 charge.

As indicated at the outset, the Court did not accept the Association's contention that section 6 of the Clayton Act and the Capper-Volstead Act "immunized" it from suit. On the Sherman Act § 2 dismissal, the Court reversed the District Court and remanded the case for trial on the charges of the complaint. It affirmed both the Clayton Act § 7 and Sherman Act § 3 judgments and did not disturb the District Court's relief, which was to require the Association to dispose of Embassy within a year.

The opinion of the Court, except for the statement of facts already stated above, is as follows:

> "The Association's chief argument for antitrust exemption is based on § 2 of the Capper-Volstead Act, which authorizes the Secretary of Agriculture to issue a cease-and-desist order upon a finding that a cooperative has monopolized or restrained trade to such an extent that the price of an agricultural commodity has been 'unduly enhanced'."7/

> "The contention is that this provision was intended to give the Secretary of Agriculture primary jurisdiction, and thereby exclude any prosecutions at all under the Sherman Act. This Court unequivocally rejected the same contention in United States v. Borden, 308 U.S. 188, 206, after full consideration of the same legislative history that we are now asked to review again. We adhere to the reasoning and holding of the Borden opinion on this point.

> "The Association also argues that without regard to § 2 of the Capper-Volstead Act, § 1 of that Act and § 6 of the Clayton Act demonstrate a purpose wholly to exempt agricultural associations from the antitrust laws. In the Borden case this Court held that neither § 6 of the Clayton Act

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7/ Capper-Volstead Act § 2: 'If the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof [after a 'show cause' hearing he may direct] such association to cease and desist from monopolization or restraint of trade. . .' This order may be enforced by the Attorney General if not obeyed by the association. 42 Stat. 388 (1922), 7 U.S.C. § 292.

nor the Capper-Volstead Act granted immunity from prosecution for the combination of a cooperative and others to restrain trade there charged as a violation of § 1 of the Sherman Act. Although the Court was not confronted with charges under § 2 of the Sherman Act in that case we do not believe that Congress intended to immunize cooperatives engaged in competition-stifling practices from prosecution under the antimonopolization provisions of § 2 of the Sherman Act, while making them responsible for such practices as violations of the anti-trade-restraint provisions of §§ 1 and 3 of that Act. These sections closely overlap, and the same kind of predatory practices may show violations of all. 8/ The reasons underlying the Court's holding in the Borden case that the cooperative there was not completely exempt under § 1 apply equally well to §§ 2 and 3. The Clayton and Capper-Volstead Act, construed in the light of their background, do not lend themselves to such an incongruous immunity-distinction between the sections as that urged here.

"In the early 1900's, when agricultural cooperatives were growing in effectiveness, there was widespread concern because the mere organization of farmers for mutual help was often considered to be a violation of the antitrust laws. Some state courts had sustained antitrust charges against agricultural cooperatives, 9/ and as a result eventually all the States passed acts authorizing their existence. 10/ It was to bar such prosecutions by the Federal Government as to interstate transactions that Congress in 1914 inserted § 6 in the Clayton Act exempting agricultural organizations, along with labor unions, from the antitrust laws. This Court has held that the provisions of that section, set out below, 11/ relating to labor unions do not manifest "a congressional purpose wholly to exempt" them from the antitrust laws, 12/ and neither the language nor the legislative history of the section indicates

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8/ Klor's Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207, 211; United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 226,n. 59; Standard Oil Co. of New Jersey v. United States, 221 U.S. 1, 59-60

9/ See, e.g., Reeves v. Decorah Farmers' Cooperative Society, 160 Iowa 94, 140 N. W. 844 (1913); Burns v. Wray Farmers' Grain Co.

(Continued)

a congressional purpose to grant any broader immunity to agricultural cooperatives. The language shows no more than a purpose to allow farmers to act together in cooperative associations without the associations as such being "held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws," as they otherwise might have been. This interpretation is supported by the House and Senate Committee Reports

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9/continued.
65 Colo. 425, 176 P. 487 (1918); Ford v. Chicago Milk Shippers' Ass'n., 155 Ill. 166, 39 N.E. 651 (1895). Contra, Burley Tobacco Society v. Gillaspy, 51 Ind. App. 583, 100 N.E. 89 (1912). Hanna, Antitrust Immunities of Cooperative Associations, 13 Law and Contemp. Prob. 488-490 (1948); Hanna, Cooperative Associations and the Public, 29 Mich. L. Rev. 148, 163-165 (1930); Jensen, The Bill of Rights of U.S. Cooperative Agriculture, 20 Rocky Mt. L. Rev. 181, 184-189 (1948). See generally Att'y Gen. Nat'l. Comm. Antitrust Rep.(1955), 306-313; Note, 57 Mich. L. Rev. 921 (1959).

10/ See statutes collected in Jensen, The Bill of Rights of U.S. Cooperative Agriculture, 20 Rocky Mt. L. Rev. 181, 191, n. 29 (1948); Note, 38 Harv. L. Rev. 87, 89, n. 17 (1924). See Connolly v. Union Sewer Pipe Co., 184 U.S. 540, 556-558 (1902), holding Illinois exemption statute unconstitutional, and see dissent per McKenna, J., at 565, 571; overruled by Tigner v. Texas, 310 U.S. 141 (1940).

11/ Clayton Act § 6: "The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws." 38 Stat 730 (1914), as amended, 15 U.S.C. § 17.

12/ Allen Bradley Co. v. Local Union No. 3, 325 U.S. 797, 805; Duplex Printing Press Co. v. Deering, 254 U.S. 443, 468-469. Cf. United States v. Hutcheson, 312 U.S. 219.

on the bill. 13/ Thus, the full effect of § 6 is that a group of farmers acting together as a single entity in an association cannot be restrained 'from lawfully carrying out the legitimate objects thereof,' but the section cannot support the contention that it gives such an entity full freedom to engage in predatory trade practices at will. See United States v. King, 229 F. 275, 250 F. 908, 910. Cf. United States v. Borden Co., 308 U.S. 188, 203-205.

"The Capper-Volstead Act of 1922 extended § 6 of the Clayton Act exemption to capital stock agricultural cooperatives which had not previously been covered by that section.14/ Section 1 of the Capper-Volstead Act also provided that among 'the legitimate objects' of farmer organizations were 'collectively processing, preparing for market, handling, and marketing' products through common marketing agencies and the making of 'necessary contracts and agreements to effect such purposes.' We believe it is reasonably clear from the very language of the Capper-Volstead Act, as it was in § 6 of the Clayton Act, that the general philosophy of both was simply that individual farmers should be given, through agricultural cooperatives acting as entities, the same unified competitive advantage -- and responsibility -- available to businessmen acting through corporations as entities. As the House Report on the Capper-Volstead Act said:

13/ 'In the light of previous decisions of the courts and in view of a possible interpretation of the law which would empower the courts to order the dissolution of such organizations and associations, your committee feels that all doubt should be removed as to the legality of the existence and operations of these organizations and associations, and that the law should not be construed in such a way as to authorize their dissolution by the courts under the anti-trust laws or to forbid the individual members of such associations from carrying out the legitimate and lawful objects of their associations.' (Emphasis supplied.) H.R.Rep. No. 627, 63d Cong., 2d Sess. 16; S. Rep. No. 698, 63d Cong., 2d Sess. 12.

14/ Some Congressmen opposed § 6 of the Clayton Act because it did not include agricultural associations with capital stock. 'Under the provisions of section 7 [now §6] of this bill farmers' organizations with capital stock, organized for profit, would be left subject to the provisions of the Sherman antitrust law.' H.R.Rep. No. 627, Pt. 4, 63d Cong., 2d Sess. 4. and see id., Pt. 3, 10.

> 'Instead of granting a class privilege, it aims to equalize existing privileges by changing the law applicable to the ordinary business corporations so the farmers can take advantage of it.' 15/

"This indicates a purpose to make it possible for farmer-producers to organize together, set association policy, fix prices at which their cooperative will sell their produce, and otherwise carry on like a business corporation without thereby violating the antitrust laws. It does not suggest a congressional desire to vest cooperatives with unrestricted power to restrain trade or to achieve monopoly by preying on independent producers, processors or dealers intent on carrying on their own businesses in their own legitimate way. In the Senate hearings on the Capper-Volstead Act the Secretary of Agriculture, who was given a large measure of authority under this Act, and the Solicitor of his Department, testified that the Act would not authorize cooperatives to engage in predatory practices in violation of the Sherman Act. 16/ And the House Committee Report assured the Congress that:

> 'In the event that associations authorized by this bill shall do anything forbidden by the Sherman Antitrust Act, they will be subject to the penalties imposed by that law.' 17/

15/ H. R. Rep. No. 24, 67th Cong., 1st Sess. 2.

16/ The Solicitor of the Department of Agriculture testified that it was his 'opinion that if the farmers want to create monopolies or want to engage in unfair practices in commerce, this bill certainly would not give them the right to do it, and they would have to get another bill. . . . [T]hese organizations would not be allowed to adopt any illegal means or methods of conducting their business. . . . I do think that if they . . . engaged in some practice that prevented other people from selling their milk . . . they would be subject to the antitrust laws. . . . It does not say . . . that they may adopt any unfair methods of competition.' The Secretary of Agriculture testified to the same effect. Hearings before a Subcommittee of the Senate Judiciary Committee on H.R. 2373, 67th Cong., 1st Sess. 203, 204, 205.

17/ Op. cit., supra, note 15, at 3.

"Although contrary inferences could be drawn from some parts of the legislative history, we are satisfied that the part of the House Committee Report just quoted correctly interpreted the Capper-Volstead Act, and that the Act did not leave cooperatives free to engage in practicies against other persons in order to monopolize trade, or restrain and suppress competition with the cooperative. Therefore, we turn now to a consideration of the District Court's judgments in this case.

"Sherman Act § 2 Dismissal. -- The complaint charging monopolization alleged that the Association had 'threatened and undertaken diverse actions to induce or compel dealers to purchase milk from the defendant [Association], and induced and assisted others to acquire dealer outlets' which were not purchasing milk from the Association. It also alleged that the Association 'excluded, eliminated, and attempted to eliminate others, including producers and producers' agricultural cooperative associations not affiliated with defendant, from supplying milk to dealers.' Supporting this charge the statement of particulars listed a number of instances in which the Association attempted to interfere with truck shipments of nonmembers' milk, and an attempt during 1939-42 to induce a Washington dairy to switch its non-Association producers to the Baltimore market. The statement of particulars also included charges that the Association engaged in a boycott of a feed and farm supply store to compel its owner, who also owned an Alexandria dairy, to purchase milk from the Association, and that it compelled a dairy to buy its milk by using the leverage of that dairy's indebtedness to the Association. We are satisfied that the allegations of the complaint and the statement of particulars, only a part of which we have set out, charge anti-competitive activities which are so far outside the 'legitimate objects' of a cooperative that, if proved, they would constitute clear violations of § 2 of the Sherman Act by this Association, a fact, indeed, which the Association does not really dispute if it is subject to liability under this section. It was error for the District Court to dismiss the § 2 charge.

"Clayton Act § 7 Judgment. -- In 1954 the Association purchased the assets of Embassy Dairy in Washington. The complaint charged that this acquisition constituted a violation of § 7 of the Clayton Act, which prohibits a corporation engaged in commerce from acquiring all or any part of the assets of another corporation so engaged where the effect may

be to tend to create a monopoly or substantially lessen competition. A trial was had before the District Court on this charge and the court found that the motive for and result of the Embassy acquisition was to: eliminate the largest purchaser of non-Association milk in the area; force former Embassy non-Association producers either to join the Association or ship to Baltimore, thus both bringing more milk to the Association and diverting competing milk to another market; eliminate the Association's prime competitive dealer from government contract milk bidding; and increase the Association's control of the Washington market. On these findings, amply supported by evidence, the District Court could properly conclude, as it did, that the Embassy acquisition tended to create a monopoly or substantially lessen competition, and was therefore a violation of § 7. 18/

"This leaves the contention that the acquisition of Embassy was protected by the last paragraph of § 7 of the Clayton Act which in pertinent part provides that:

> 'Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by . . . the Secretary of Agriculture under any statutory provision vesting such power in such . . . . Secretary. . . . ' 19/

"The Association contends that its purchase of Embassy Dairy was 'consummated pursuant to authority given by . . . the Secretary of Agriculture'. The trouble with this contention is that there is no 'statutory provision' that vests power in the Secretary of Agriculture to approve a transaction and thereby exempt a cooperative from the antitrust laws under the circumstances of this case. While there is a 'statutory provision' vesting power in the Secretary of Agriculture to enter into agricultural marketing agreements which 'shall be deemed to be lawful' and 'not . . . be in violation of any of the antitrust laws of the United States,' no such marketing agreement is involved here. 20/

18/ 167 F. Supp. 799, 807-808

19/ See note 3, supra.

20/ Agricultural Marketing Agreement Act of 1937, § 8b, 7 U.S.C. §608b. United States v. Borden Co., 308 U.S. 188, 198-202; United States v. Rock Royal Co-operative, Inc., 307 U.S. 533, 560; United States v. Maryland & Virginia Milk Producers' Assn., Inc., 90 F. Supp. 681, 688.

"Sherman Act § 3 Judgment. --The complaint charged that the Association, Embassy and others had violated § 3 of the Sherman Act by engaging in a combination and conspiracy to eliminate and foreclose competition with the Association and with dealers purchasing milk from the Association. The District Court, with the consent of the parties, considered and decided this § 3 charge on the evidence offered on the § 7 Clayton Act charge. A crucial element in this charge of concerted action was the Association's purchase of Embassy's assets under a contract containing an agreement by the former owners of Embassy not to compete with the Association in the milk business in the Washington area for 10 years, and to attempt to have all former Embassy producers either join the Association or ship their milk to the Baltimore market. Also, particularly pertinent to the charge of a § 3 combination, was evidence showing a long and spirited business rivalry between the Association and its producers on the one hand and Embassy and its independent producers on the other. The Association has been 'unhappy' about Embassy's price cutting and its generally 'disruptive' competitive practices that had made Embassy a 'thorn in the side of the Association for many years'. There was also evidence emphasized by the court in its Clayton Act § 7 opinion that 'the price paid by the Association for the transfer was far in excess of the actual and intrinsic value of the property purchased.' 167 F. Supp. 799, 806. After readopting its Clayton Act § 7 findings regarding the anticompetitive motives and results of the Embassy acquisition, see p. , supra, the District Court made the three following additional findings on the Sherman Act §3 charge: (1) 'that the result of the transaction complained of was a foreclosure of competition,' (2) 'that the transaction complained of was entered into with the intent and purpose of restraining trade,' 21/ and (3) 'that an unreasonable restraint of trade, violative of the Sherman Act, has resulted from the acquisition of Embassy Dairy by the defendant [Association].' On the basis of its findings and opinion the court then concluded that 'the transaction involving the acquisition of Embassy Dairy by the defendant constitutes a violation of Section 3 of the Sherman Act.' 168 F. Supp, 880, 881, 882.

21/ See United States v. Griffith, 334 U.S. 100, 105. Cf. United States v. Columbia Steel Co., 334 U.S. 495, 525; United States v. Paramount Pictures, Inc., 334 U.S. 131, 173.

"The facts found by the court show a classic combination or conspiracy to restrain trade, unless, as the Association contends, 'the transaction involving the acquisition of Embassy' upon which the judgment against it was based is protected against Sherman Act prosecutions by the Capper-Volstead Act's provisions that cooperatives can lawfully make 'the necessary contracts and agreements' to process, handle and market milk for their producer-members. The Embassy assets the Association acquired are useful in processing and marketing milk, and we may assume, as it is contended, that their purchase simply for business use, without more, often would be permitted and would be lawful under Capper-Volstead. But even lawful contracts and business activities may help to make up a pattern of conduct unlawful under the Sherman Act. 22/ The contract of purchase here, viewed in the context of all the evidence and findings, was not one made merely to advance the Association's own permissible processing and marketing business; it was entered into by both parties, according to the court's findings as we understand them, because of its usefulness as a weapon to restrain and suppress competitors and competition in the Washington metropolitan area. We hold that the privilege Capper-Volstead grants producers to conduct their affairs collectively does not include a privilege to combine with competitors 23/ so as to use a monopoly position as a lever further to suppress competition by and among independent producers and processors.

"Adequacy of Relief. -- The Government's appeal in this case is directed in part at the relief granted it by the District Court. The judgment requires the Association to 'dispose of as a unit and as a going dairy business all [Embassy] assets . . . tangible or intangible, which it acquired on July 26, 1954, and replacements therefor' and to do so in 'good faith' to preserve the business in 'as good condition as possible.' The District Court refused to go further and require the Association to dispose of 'all assets used' in the Embassy operation, to prohibit the Association from operating as a dealer in the Washington market for a period after divestiture, to prevent the further acquisition of distributors without prior approval of the Government, and to grant the Government general 'visitation rights' as to the Association's records and employees. The District Court was of the view that the Government

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22/ See Schine Chain Theatres, Inc., v. United States, 334 U.S. 110, 119.

23/ See United States v. Maryland Cooperative Milk Producers, Inc., 145 F. Supp. 151

would either be adequately protected as to these matters by the 'good faith' requirement or by subsequent orders of the District Court when the occasion necessitated. The formulation of decrees is largely left to the discretion of the trial court, and we see no reason to reject the judgment of the District Court that the relief it granted will be effective in undoing the violation it found in view of the fact that it also retains the cause for future orders, including the right of visitation if deemed appropriate. See Associated Press v. United States, 326 U.S. 1, 22-23.

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FEDERAL INCOME TAX - EXEMPT FINANCING ASSOCIATIONS -

DEDUCTIBILITY OF SPECIAL RESERVES

(Growers Credit Corporation, 33 T. C. No. 110)
Docket No. 60562 (1960))

In this case the Tax Court held that Growers Credit Corporation was not exempt under section 101(13) of the 1939 Code (comparable provision, 26 U.S.C. 501(c)(16) under the 1954 Code)as a financing corporation properly organized and functioning under that section by an "exempt" farmer cooperative. It also held, however, that deposits of 5 cents a box which borrower-stockholders were required to make to indemnify the lending corporation against credit and operating losses, were not taxable income to the corporation in the year of receipt.

For the purposes of an understanding of the decision in this case, Section 101(13) of the 1939 Internal Revenue Code is quoted below:

"(13) Corporations organized by an association exempt under the provisions of paragraph (12), or members thereof, for

> the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose."

The petitioner in this case was a corporation with its principal office in Wenatchee, Washington, in the center of a large fruit-growing area. It appears that the need for this corporation arose at about the time that the Regional Agricultural Credit Corporation ceased its lending operations in that area.

The petitioner was incorporated in the State of Washington, in December 1944, under the Uniform Business Corporation Act of the State of Washington for a term of 50 years. Its principal objective and purpose, as set out in its Articles of Incorporation, was "To advance and lend money to and/or furnish credit facilities for persons, firms or corporations engaged in the production and/or marketing of horticultural and agricultural products. . . ."

Petitioner's articles of incorporation authorized preferred and common stock. Preferred stock carried no voting rights and each owner of common stock had only one vote. Common stock could be held only by producers of horticultural or agricultural products and associations of such producers who had patronized the corporation within a period of 1 year or who were about to become patrons of petitioner.

Petitioner's only business had been the securing of funds from commercial bankers and the loaning of these funds to its grower-stockholders. It has at no time been in the business of buying supplies or marketing products of its stockholders or others.

Each applicant for a loan was required to agree to participate in the creation of a "reserve fund" to be established, held and administered by petitioner. The rules and regulations of [illegible]

petitioner and the loan applications of the borrowers made detailed provision for the establishment and administration of the fund.

The Court pointed out that in order for a corporation to be exempt under paragraph (13), it must have been organized by an association exempt under the provisions of paragraph (12) (i.e. Section 101(12) of the I.R.C. 1939) or members thereof, must be operated in conjunction with such association and, being a corporation having capital stock, substantially all of such stock must be owned by such association, or members thereof.

The Court found that while it might be said that the petitioner operates "in conjunction with" Northwest Wholesale, Inc., which was during the years involved in the case exempt under Section 101(12), "it is not as apt" to say that petitioner "is operated in conjunction with" Northwest in the connotation of the statute.

The Court specifically stated that it could not in any event find from the evidence presented that petitioner was organized by Northwest (i.e. Northwest Wholesale Incorporated), or members thereof, or that substantially all of petitioner's capital stock was held by Northwest, or its members, as required by the statute.

In support of such findings, the opinion stated:

> "Petitioner was organized in 1944 to take over the financing program conducted by the R.A.C.C. since 1941. It was organized through the efforts of the L.U.P.C. whose members were fruit growers of the North Central Washington area, and four of the five incorporators selected by the committee were voting members of cooperatives that were in turn voting members of Northwest. But the fact that four of the incorporators happened to be members of marketing cooperatives that may have been exempt under paragraph (12) and which were voting members of the supply cooperative that later became exempt under paragraph (12) was in our opinion merely incidental. Petitioner was not organized either by or through the efforts of 'an association' exempt under paragraph (12), or the members thereof. (Emphasis supplied.) Northwest, which is the single association which it might be said petitioner is operated in conjunction with, has no individual 'members'-- its 'members' are marketing cooperatives.
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> "Furthermore, we cannot conclude from the evidence that 'substantially all' the capital stock of petitioner was owned by

'such association,' or members thereof. None of the petitioner's stock is owned by either Northwest or any of the marketing cooperatives who are members thereof. Even if we look through this double tier of cooperatives to determine who the individual members of Northwest might be, the evidence is that only about 60 per cent of petitioner's stock was owned by individuals who were voting members of Northwest, and we cannot say that 60 per cent is 'substantially all' of the stock within the meaning of the law. And we again note that the individuals who were stockholders of petitioner were stockholders solely because they had borrowed money from petitioner and not because of any connection they may have had with any cooperative exempt under paragraph (12)."

The Court in discussing the arguments of the petitioner for a liberal interpretation of the language in Section 101(13) pointed out one main difference between the exemption in Section 101(12) and the exemption in Section 101(13). That difference, according to the Court, is that Section 101(12) deals with 'true cooperatives' which must in effect refund the net margins to the patrons on a pro rata basis or pay a tax thereon whereas corporations exempt under Section 101(13) are not required to distribute their annual earnings in excess of the cost of operations either to the borrowers or patrons who paid the interest or made the deposits which made the earnings possible, or to members or patrons of any organization which is exempt under paragraph (12). According to the Court, any net income of this petitioner in excess of its cost of operations may be accumulated and never paid out until it is liquidated, at which time it would be distributed to the then stockholders of the corporation who might be entirely different from the patrons whose patronage gave rise to the excess earnings.

The Court also pointed out that the provision of the Revenue Act of 1951 making paragraph (12) type organizations subject to tax on their net income not distributed as dividends to stockholders or "allocated" to patrons, was not made applicable to paragraph (13).

Quoting from the Senate Finance Committee Report on the bill which first granted this exemption (Section 101(13) of 1939 Code) in the Revenue Act of 1928, the Court said it was clear that the purpose of paragraph (13) was to extend exempt status to "financial auxiliaries of exempt cooperatives."

The Court having decided that petitioner was not exempt from tax, said it must now decide whether the deposits of 5 cents per box of fruit sold were taxable income to petitioner in the years in which the deposits were received.

The Court then referred to a Supreme Court case, Eisner v. Macomber, which is often cited as authority by some of the advocates of subjecting farmer cooperatives to a corporate income tax on so-called noncash patronage refunds, as follows:

> "The Supreme Court defined taxable income in Eisner v. Macomber, 252 U.S. 189, 207, as follows: 'Income may be defined as the gain derived from capital, from labor, or from both combined ***.' For the deposits here involved to be considered taxable income to petitioner in the year received, we would have to find that petitioner received the deposits as its own funds and subject to its unfettered control, as compensation for either loans made to borrowers from petitioner's capital, or for services rendered to borrowers by petitioner. The intent of the parties as to the nature of and purpose for the deposits, determined from the agreements between them and their actions with respect thereto, controls. Luckenbach v. McCahan Sugar Co., 248 U.S. 139; Clinton Hotel Realty Corp. v. Commissioner, 128 F. 2d 968 (C.A. 5), reversing 44 B.T.A. 1215; John Mantell, 17 T.C.1143.
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> "It is clear from the facts in this case that the deposits were intended as indemnity for petitioner, were to remain the funds of the depositors until such time as petitioner might have to use them, and were not intended as compensation to petitioner for use of its capital or for any services rendered. Under such circumstances, the deposits were not taxable income to petitioner when received, and we so hold."

Referring to the respondent's principal legal argument for taxation to the corporation of the deposits to the reserve fund, based on the "claim of right" doctrine, the Court concluded:

> "In view of our conclusions that these deposits were not 'income,' as defined in Eisner v. Macomber, supra, to petitioner and that petitioner did not claim the deposits as its own at the time they were made, we do not think the 'claim of right' doctrine is applicable. It is our understanding that the 'claim of right' doctrine is concerned more with 'when' income is taxable rather than whether a receipt is taxable income, and if so, to whom it is taxable. The taxpayer must be claiming ownership of the funds received and the present unfettered right to use them as its own for any purpose desired, rather than the mere claim of right to

hold the funds for specified purposes, as is the situation here. Here, petitioner received these deposits recognizing that the funds belonged to the depositors unless and until it became necessary to use them to cover losses, so the deposits received are not income to petitioner as long as they are neither used for that purpose nor are otherwise appropriated to petitioner's use in denial of the depositors' right to the ultimate return thereof. On the other hand, had petitioner received the deposits claiming that they belonged to it unless the depositors subsequently became entitled to a refund thereof upon the happening of some future contingency, then the deposits would be income to petitioner when received."

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TRADE REGULATION - PRICE DISCRIMINATION -

SCOPE OF COOPERATIVE EXEMPTION IN ROBINSON-PATMAN ACT

(American Motor Specialties Co. v. Federal Trade Commission, CA 2 F. 2d (May 5, 1960))

The court held in this case, among other things, that the provision in the Robinson-Patman Act allowing a cooperative to return its earnings to its members does not excuse violation of the act even though savings through receipt of a discimina-tory price are passed on to its members.

The Court said in part:

"Quality Bakers of America F.T.C., 114 F. 2d 393, 400 (1 Cir. 1940) holds that Section 4 does not authorize cooperative to accept brokerage fees forbidden by Section 2(c) even though these fees are passed on to the members. Section 4 states that nothing in the Robinson-Patman Act shall prevent a cooperative association from

returning to its members, producers, or consumers any part of the association's earnings. Section 4 does not confer upon cooperative associations any blanket exemption from the Robinson-Patman Act. It only protects a cooperative association from charges of violating the Act premised upon the association's method of distributing earnings. See Farmers Cooperative Co. v. Birmingham, 86 F. Supp. 201, 230 (N.D. Iowa 1949).

"The fact that earnings which result from illegal activity may be distributed to the association's members does not insulate the association from prosecution for the illegal activity. Clearly Section 4 does not permit a cooperative to violate Section 2(f) even though its savings through receipt of discriminatory prices are passed on to its members. Neither can Section 4 be said to prohibit imputing to the cooperative knowledge possessed by its membership for purposes of establishing knowing receipt under Section (2)."

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STATE TAXATION - COOPERATIVE EXEMPTIONS FROM CORPORATION EXCISE TAX RECOGNIZED UNDER OREGON LAW

(Pacific Supply Cooperative v. Dean Ellis, et al.
Civil No. 259, 873, C. Ct. of Ore.,
4th Jud. Dis't.,(December 22,1959))

This case involved a determination of whether Pacific Supply Cooperative was entitled to exemption for the fiscal years ending June 30, 1954, 1955, 1956, and 1957 from the Oregon Corporation excise tax.

An excerpt from the opinion follows:

A determination of the issues here presented involved the interpretation of the exemption statute (ORS 317.080 (9)),which provides that among the corporations which are exempt from taxes are:

> 'Farmers and fruit growers associations, organized and operated on a cooperative basis (a) . . . . (b) for the purpose of purchasing supplies and equipment for the use of members and other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses.'

Plaintiff contends that under the clear language of the statute it is exempt from the Oregon corporation excise tax: that it is a cooperative corporation organized pursuant to the provisions of ORS Chapter 62 for the purpose of gaining the advantage of mass purchasing of supplies and equipment for use by its members who are cooperative associations.

The defendants contend that in the public interest all tax exempt statutes should be strictly construed in favor of the taxing authority, and that a strict interpretation of ORS 317.080(9) does not provide exemption to a corporation which, although organized as a cooperative is not composed of members who are 'farmers' or 'fruit growers associations' but whose membership is composed of a number of cooperative associations who are not primary producers, such as the plaintiff herein. That 'farmers' and 'fruit growers associations', as those words are used in the statute, contemplate only such cooperatives which are the immediate agents of the individual farmers or fruit growers associations and deal with the producers directly.

Counsel for the defendant has cited a number of Oregon cases in support of his contention that all exemption statutes are to be strictly construed; however, the Court calls attention to the most recent decision of our Supreme Court, Multnomah School of the Bible vs. Multnomah County, reported in Volume 69, Oregon Advanced Sheets, at page 75, wherein the Court, speaking through Justice Warner, reviews the decisions in Oregon on this subject and announces that Oregon has aligned itself with those jurisdictions which have adopted the rule of 'strict but reasonable construction' and repudiates the rule that the narrowest possible meaning shall be given to words descriptive of the exemption.

Giving the language of the statute here involved a strict but reasonable construction, it appears to the Court that the Legislature intended to grant tax exemption to all cooperative corporations organized for the purpose of gaining the benefit of group sales and volume purchases of supplies and equipment for its members. The ultimate test for granting or denying the

exemption must be determined by an examination of the organization and function of the cooperative. If its organization and function results in a benefit to a farmer, fruit growers, or some other cooperative association whose members are individual farmers or fruit growers, it is, in the opinion of the Court, entitled to the exemption.

To hold, as contended by the defendant, that the Legislature intended to grant exemption only to those cooperatives where the relationship of the members to the cooperative is that of 'farmer' or 'fruit grower association' is, in the opinion of the Court, placing a strict and narrow interpretation on the language of the statute.

Sub-paragraph (2) of Regulation 7.080 (9) of the Oregon State Tax Commission, entitled 'Exempt Corporations: Farmers, cooperative marketing and purchasing associations' provides as follows:

> 'Cooperative associations engaged in the purchasing of supplies and equipment for farmers, fruit growers and dairymen, and turning over such supplies and equipment to them at actual cost, plus operating expenses, are exempt.'

Thus it appears to the Court that the contention of the defendant is contrary to its own published regulation, which uses the words 'cooperative associations.'

In considering this matter it is of interest to note that ORS 317.080 (9) is almost identical with the provisions of the Federal Income Tax Statute IRC (1939) 101 (12) and now in effect as IRC (1954) Sec. 521, on this subject, and that plaintiff has been granted exemption from Federal taxation.

The 1959 Legislature reviewed the provisions of ORS 317.080 (9) and enacted ORS Chapter 356, entitled 'Relating to Corporation Excise Taxes and Exempt Corporations.' This chapter abolished the exemption of a number of corporations which had previously enjoyed tax exemptions; however, it did not narrow, restrict, or remove the exemption granted to corporations described in sub-paragraph (9) of the statute.

The Court recognizes that the business activity of the plaintiff and other similar cooperatives has greatly increased during the past years and that they are in direct competition with other

tax paying businesses; that all tax exemption statutes result in a narrowing of the tax base and shift the tax burden, but is of the opinion that this is a matter which should be addressed to the Legislature since it is charged with the responsibility of determining the public policy of the State of Oregon with respect to cooperatives.

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BONA FIDE COOPERATIVE OF HOMEWORKERS EXEMPT FROM FAIR LABOR STANDARDS ACT OF 1938

(Mitchell v. Whitaker House Cooperative, Inc. CA 1. 170 F. Supp. 743 (February 13, 1959))

The District Court opinion in this case (See Summary Legal Series No. 9, p.31) is affirmed. It held that a bona fide cooperative controlled by member-producers whose hand-knit infants' outerwear it sells is not an employer of member-producers and hence is not subject to Fair Labor Standards Act.

The Court noted that the Wage and Hour Division has recognized that in certain situations there may be no employer-employee relationship between a cooperative and its member-workers. It then said: "We believe that the instant case presents such a situation. The members of the cooperative individually are the producers of the goods in which the cooperative deals. We agree with the district court's characterization that 'the members are engaged through the cooperative, in a joint venture for the production and sale of hand-knit infants' outerwear' * * * Where the items produced by the members are the units used for measuring each member's share in the cooperative's net income, we think, to quote again from the district court's opinion:'Their interests as members and producers are identical. The work they perform is performed by them as members of the cooperative, and not as its employees'. Consequently, there is no employment relationship present in the production of the items and the Act is not applicable to this cooperative."

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ADMINISTRATIVE LAW - CONTESTING VALIDITY
of
USDA MARKETING ORDER

(Willow Farms Dairy, Inc., v. Benson,
276 F. 2d 856,(April 12, 1960))

An order, a provision of an order, or an obligation imposed on a milk handler pursuant to an order may be challenged only by means of a petition filed under section 8c(15)(A) of the Agricultural Marketing Act of 1937 (7 U.S.C. 608c(15)(A)), with subsequent judicial review under that section. This is the conclusion of the United States Court of Appeals for the Fourth Circuit in the case cited above. The court, in a per curian decision, affirmed on the basis of the district court opinion in 181 F. Supp. 798 (Feb. 19, 1960).

Willow Farms Dairy, Inc., commenced an action alleged to be "a bill in equity within the meaning" of 7 U.S.C. 608c(15) to review adverse rulings of the Secretary of Agriculture with regard to a milk order for the Upper Chesapeake Bay, Maryland Marketing Area. The lower court held, however, that this was an attempt prematurely to invoke the court's jurisdiction in the absence of a showing of compliance with the (15)(A) procedure. It dismissed the complaint on the sole ground that the District Court was without jurisdiction.

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CONTRACT OF SALE - BREACH OF WARRANTY

(Farmers Co-operative Elevator Company of Douglas v.
Albert Dievert, Okla. 346 P. 2 947 (Nov. 17, 1959))

Action by Albert Dievert for damages for breach of warranty on the germination capacity of seed wheat sold to him by Farmers Co-operative Elevator Company. Dievert sued for $874.60, but the jury returned a verdict for plaintiff in the sum of $244.33, and defendant appealed contending that the verdit was not sustained by the evidence and that the trial court erred in directing

a verdict.

On appeal the Co-operative denied that it had warranted that the wheat sold to plaintiff had a germination capacity of 90 per cent, and contended that the wheat was sold to him for such uses as he cared to make of it. The Co-operative admitted that a germination test had been run and showed a 90 per cent germination. The Co-operative also alleged that if the wheat sold to plaintiff did not germinate and grow, the real cause for such failure was climatic conditions affecting plaintiff's wheat lands before or after sowing and did not occur by reason of any fault of the Co-op.

Plaintiff did not deny that soon after planting the seed wheat unusually heavy rains fell. However, the testimony of witnesses who had likewise planted seed wheat purchased from the Co-operative established the fact that they too got a very light stand, even when they resowed after the heavy rains. Tests made by the Agricultural Department of the State showed that only about 27 per cent of the seed wheat would germinate. Plaintiff and other witnesses testified that in the Co-operative's elevator offices was a printed bulletin which stated: "Seed Wheat Germination Test 90 per cent." Plaintiff alleged that he relied upon this statement and a statement made to him by a representative of the Co-operative that the germination test of the wheat was 90 per cent. There was positive testimony that farmers who bought some of the same seed wheat were asked to return it to the elevator where they would be refunded what they had paid on it.

Witnesses for the Co-operative testified that the heavy rain after planting was in their opinion the real cause of Dievert's failure to get sufficient germination, but the court stated that there was equally convincing testimony that the seed wheat had a germination test of about 30 per cent.

Judgment for the plaintiff was affirmed in the amount of $244.33 together with interest and court costs.

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BUSINESS and OCCUPATION TAX - EXEMPTION

(Sumner Rhubarb Growers' Association v. State of Washington 350 P. 2d 478 -(March 17, 1960))

Action by the Sumner Rhubarb Growers' Association for a refund of taxes assessed against it by the Tax Commission under the business and occupation tax statutes of the State of Washington.

The trial court reversed the ruling of the Tax Commission and held that the Association was entitled to a refund of the taxes. The State appealed to the Supreme Court.

The Association contended that it was exempt from the tax as an agent of its farmer members in view of a statutory exemption for persons with respect to growing of agricultural produce or the sale of such products at wholesale by the grower or producer thereof.

The Supreme Court reversed the decision of the trial court and held that the terms of the statute excluded from the exemption a "cooperative . . . engaging in (a) business activity with respect to which tax liability is imposed under the provision of this chapter." The court held, however, that since the association was subject to the tax it was entitled to deductions set forth under the governing statute.

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OPERATION OF COTTON GIN - CONSTITUTING NUISANCE

(Shelton R. Bankston v. Farmers Cooperative Gin of Winnsboro, 116 So. 2d 91, (November 25, 1959))

Action against Farmers Cooperative Gin of Winnsboro, Louisana, operator of a cotton gin, for damages. The complaint alleged that lint, mote, burrs, trash, dirt and dust which allegedly was blown through a discharge pipe from the gin operated by defendant was permitted to spread and drift on nearby property of plaintiffs.

The complaint alleged damages for loss of a hay crop in the amount of $1,500, as well as damages for inconvenience, mental anguish, and suffering, coupled with additional specification by one of the plaintiffs of an aggravated asthmatic condition, in the amount of $1,000 and $1,500 respectively.

Plaintiffs appealed verdict for defendant.

The court stated that a property owner has the right to conduct on his property any lawful business not per se a nuisance so long as the business is so conducted that it will not unreasonably inconvenience a neighbor in the reasonable enjoyment of his property.

The court ruled that plaintiffs' sustained burden of proof to the effect that defendant's operation of its gin constituted a nuisance but it held that damage to the hay crop and aggravation of the asthmatic condition as a result of operation of the gin are not proved. The court refused, therefore, to award damages on these claims, but it held that the evidence amply supported the claim for inconvenience, mental anguish, and suffering because of the infiltration of refuse, lint, trash, dust, and dirt blown from the gin to the residence of plaintiffs.

Judgment awarded plaintiffs in the amount of $400.00, plus interest and court costs.

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PUBLIC SERVICE COMMISSION - JURISDICTION OVER

RURAL ELECTRIC COOPERATIVE

(Socorro Electric Cooperative, Inc., v. Public Service Company,

348 P. 2d 88,(Dec. 21,1959))

Proceeding on petition of public utility for order authorizing construction of power transmission line to proposed industrial site, or authorizing transmission of power to proposed site over lines operated by the Bureau of Reclamation. A rural electric

cooperative petitioned for leave to intervene to protest application. The Public Service Commission allowed intervention only for the purpose of offering evidence as to whether public convenience and necessity required the service proposed by the untility. The Commission ruled that it had no jurisdiction over the cooperative and could grant it no affirmative relief and issued order granting utility the authority sought. On appeal the Supreme Court of New Mexico affirmed the decision of the District Court of Socorro County which had affirmed the Commission's order. The Supreme Court held that the cooperative, which did not profess to, and could not, serve the public generally, and which could not be compelled to serve the public or a specific individual who might request such service, was not a "public utility," within the meaning of the New Mexico Public Utility Act, and hence, the Public Service Commission had no jurisdiction over the cooperative and could not grant it any affirmative relief with respect to its claim that the utility was preparing to unreasonably interfere with its service or system.

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PRINCIPAL and AGENT - SCOPE OF AUTHORITY

(Towle Food Products Co. v. Norbest Turkey Growers Association, 275 F. 2d 196 (Feb. 9,1960))

The Towle-George Turkey Company, which was purchasing turkey logs (boned, compressed turkey meat) under contract from the Norbest Turkey Growers Association, at an effective price of 95 cents per pound, entered into a contract to sell them to the Turkey Log Corporation of Illinois (hereinafter referred to as Illinois) for $1.05 per pound, with payment upon delivery and the total purchase price payable by August 1, 1954. From time to time Illinois ordered turkey logs from Towle, and Towle in turn placed orders with Norbest who made shipments to points designated by Illinois.

When Towle went to Europe he authorized Norbest to make shipments to and as ordered by Illinois, with payment to be made by Illinois directly to Norbest at the rate of $1.05 a pound. When Illinois did not pay Norbest, Towle failed to collect the 10 cents

per pound profit which it had anticipated under the contract with Illinois.

Towle instituted suit against Norbest alleging that Norbest was authorized to ship to Illinois only on a sight draft bill of lading basis and that Norbest exceeded its authority by selling to Illinois on credit.

The court observed that with few exceptions Towle had invoiced Illinois on an open account basis and that with few exceptions the whole course of dealing between Norbest and Trowle had also been on credit. The court stated that although Norbest received no consideration to act as agent for Towle, it was bound to complete performance of its agreement once that performance was begun. The court concluded, however, that the evidence did not establish clear and unambiguous instructions on the part of Towle to Norbest to ship only on sight draft and that Norbest had acted within the scope of its authority.

The judgment of the trial court for defendant was affirmed.

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BREACH OF CONTRACT

(Gold Medal Farms, Inc. v. Rutland County Co-operative Creamery, Inc., Vermont Milk and Cream Company, and Borden Company.
195 N.Y.S. 2d 179, 181 (December 31, 1959))

Action against Rutland for breach of contrat, against Vermont and Borden for wrongfully inducing such breach, and against Rutland, Vermont and Borden for conspiring to and injuring Gold Medal's business.

The court awarded damages to Gold Medal on all three causes of action and dismissed the two counterclaims interposed by Rutland. Defendants appealed.

Rutland was a cooperative receiving, handling, and disposing of milk produced by its members. Gold Medal Farms agreed to buy from Rutland all of the milk received by Rutland during the year beginning April 1, 1950 and ending March 31, 1951. The price

basis was to be that provided for in the Federal and State Milk Marketing Orders for the New York Metropolitan Milk Marketing Area for the period in which deliveries were made. Rutland was also to be paid a "handling charge" of 20 cents per hundredweight on the first 450 cans delivered daily. On October 1, 1950, Rutland refused to deliver any milk thereafter, and entered into a contract for the sale of its milk to Vermont. Rutland claimed that the contract with Gold Medal was illegal because of a contractual provision which gave Gold Medal the option of paying the "butter-fat differential" provided for in the Milk Marketing Order, on the basis of butter-fat tests of producers' milk as it was received by Rutland or on the basis of butter-fat tests of each tank of milk delivered to Gold Medal. It was contended that this was contrary to the Marketing Order which allegedly required the former alternative method.

The court stated that even if such a contention were correct, Gold Medal was required to report in detail its payments for milk and the basis thereof for audit and approval by the Market Administrator and that presumably if payment was made in violation of the Order, an adjustment would have been required, thereby removing any taint of illegality. The court also stated that the amount involved was so small that even if there had been such a violation of the Order, it was not the kind of illegality which would have vitiated the entire contract and rendered it unenforceable.

Borden and its subsidiary, Vermont, contended that the judgment against them for wrongfully inducing the breach of the contract was not supported by the evidence. The court stated that it was directly established in the record that officers of Vermont and Borden knew as early as April 1950 that Rutland was under contract to sell its milk to Gold Medal until April 1951. It also appeared that there was an oral "understanding" in late July or early August of 1950 between Rutland and Vermont that Vermont would get Gold Medal's milk from and after October 1, 1950, which actually occurred, and the terms of the "understanding" were subsequently embodied in a written contract between Rutland and Vermont, which called for the payment of some $6,194 more than the amount called for by Gold Medal's contract with Rutland for the remaining six months of the contract period.

The court observed that Borden and Vermont had interlocking officers and management, and held that the evidence established that these two companies were fully aware of the acts of each other and acted in concert in intentionally making an offer of better terms to Rutland with the intention of persuading it to breach its contract with Gold Medal.

The Court agreed with the appellants' contention that the third cause of action, for conspiracy to injure and injuring Gold Medal's business in general, was not supported by evidence.

The Court further ruled that judgment for plaintiff on the first and second causes of action should be modified by allowing the first counterclaim in the amount of $2,295.00 and interest as an offset and as so modified should be affirmed.

Judgment for plaintiff on the third cause of action was reversed without costs.

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INTERNAL REVENUE RULING - TAX ON UNRELATED BUSINESS INCOME OF EXEMPT AGRICULTURAL ORGANIZATIONS

(Rev. Rul. 60-86; I.R.B. 60-10, p. 15-17)

The ruling held that:

> "The operation of extensive club facilities, consisting of a restaurant, a bar and a cocktail lounge for members and guests, by an agricultural organization, exempt from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 as an organization described in section 501(c)(5) of the Code, constitutes the carrying on of an unrelated trade or business within the meaning of section 513 of the Code. The organization is subject to the tax on the unrelated business income resulting from the operation of such facilities."

The organization in question was formed as a nonprofit corporation to foster, aid, and encourage the breeding, proper development, and care of the better type of breeds of horses. The operation of the restaurant, bar, and cocktail lounge for its

members and guests provided over 50 per cent of the organization's annual income. The ruling states that such facilities operated on the scale involved would not be either incidental to or required by such an organization in carrying out its educational or instructual purposes.

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CONSTITUTIONALITY OF FLORIDA MILK COMMISSION ORDER

(T. G. Lee Dairy, Inc., et al. v. Florida Milk Commission)

Hearing on petition to review Florida Milk Commission official order No. 20-14, entitled "In the Matter of Requiring Distributors and Producer-Distributors to Make Deductions From Amounts Owed by Them to Their Producers and Pay the Amounts so Deducted to Organizations When Requested by Producers to Make Such Deductions and Payments for Dues Owed by Such Producers to Such Organizations".

Respondents filed action to deny and dismiss the petition.

The petitioners contended that the challenged order lacked statutory authorization,was arbitrary, unreasonable, capricious, and discriminatory, and denied the petitioners liberty of contract and constitutes the taking of private property without due process of law.

The court's ruling observed that one purpose of creating the Milk Commission was to correct improper trade practices and that it was empowered to regulate the State's milk industry which is composed of separate and to a large degree independent segments, but which are interrelated so that a healthy and productive overall industry requires cooperation. According to the court, the Commission would necassarily have the power to prescribe what such cooperation must be although the exercise of such power would not be discriminatory and confiscatory.

In ruling that the order was not arbitrary or unreasonable, the Court observed that one of the findings of fact of the Commission as a predicate for the order was that within the industry there existed a practice under which producer-distributors and distributors decided for which organization they would deduct dues which permitted an arbitrary determination whether or not to encourage and promote the growth of particular producer organizations.

The Court held that the Commission had before it a matter involving important relationships between segments of the industry with which it sought to deal in order to improve those relationships, and that the challenged order, therefore, constituted the regulation of a matter reasonably incidental to the general powers granted to the Commission by Chapter 501, Florida Statutes.

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